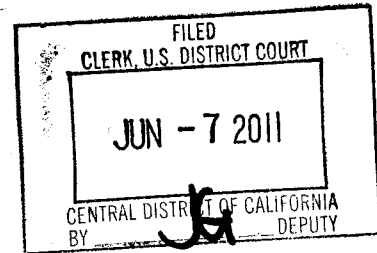


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 2 **CONSTANCE BAXTER MARLOW**
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ORIGINAL

6 *Plaintiffs in pro per*

7
 8 **IN THE UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **ANDREW CAMERON BAILEY**
 11 **CONSTANCE BAXTER MARLOW**

CASE NO: CV11-3227 GW (CWx)

12 **Plaintiffs**

13 Vs

14 U.S. BANK NA AS TRUSTEE FOR
 15 WFMB 2006-AR2; WELLS FARGO
 16 BANK NA; WELLS FARGO HOME
 MORTGAGE; WELLS FARGO ASSET
 17 SECURITIES CORPORATION; and all
 18 persons claiming by, through, or under such
 19 person, all persons unknown, claiming any
 legal or equitable right, title, estate, lien, or
 20 interest in the property described in the
 complaint adverse to Plaintiffs' title thereto;
 and JOHN DOES "1-10" inclusive,

21 **Defendants**

**PLAINTIFFS' OPPOSITION TO
 DEFENDANTS' MOTION TO
 DISMISS PLAINTIFFS' COMPLAINT
 TO QUIET TITLE**

Date: June 30, 2011

Time: 8:30 am

Ctrm: 10

Complaint filed: April 15, 2011

22 Plaintiffs Andrew Cameron Bailey and Constance Baxter Marlow hereby Oppose
 23 Defendants' Motion To Dismiss Plaintiffs' Complaint To Quiet Title (the "Motion") as set
 24 forth below. This Opposition is based upon the following memorandum of points and
 25 authorities, upon the pleadings and papers on file in this matter, which are incorporated

1 herein by this reference, and upon information and belief concerning evidentiary exhibits
2 and documents yet to be produced by Defendants.

3 4 **INTRODUCTION**

5 The Defendants are asking this Court to dismiss the Plaintiffs' complaint for failure
6 to state a claim upon which relief can be granted. The Court should deny the Motion, which
7 fails to address the issues raised in the Complaint. The Plaintiffs have raised genuine issues
8 of material fact which have not been fully and fairly adjudicated. The issues raised can be
9 resolved with great efficiency at a minimum of expense, upon production of evidence much
10 of which is in the sole custody of the Defendants. The Plaintiffs hereby ask this Court to
11 order the Defendants to produce certain documents, including the Pooling and Servicing
12 ("PSA") and related Agreements, the Custodial File which is presumably in the Trust's
13 vault, and the accounting associated with the Plaintiffs' "loan" and the alleged securitization
14 thereof, and certification that the custodial file and the promissory note have not been
15 accessed or altered since the closing of the WFMBS 2006-AR2 Trust on February 27, 2006.

16 The Defendants have provided several hundred pages of exhibits in purported
17 support of their position, but nothing submitted to date shows that they lawfully own the
18 Note or have authority to enforce the security instrument. The exhibits contain no reference
19 to the PSA and associated agreements, or any proof of compliance therewith. No accounting
20 has been offered to prove the existence of the alleged default.

21 For the Court's convenience, Defendants provide a brief summary of the issues and
22 arguments raised, which are set forth more fully in the Complaint.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 1. The primary question before the Court does not concern mere physical possession or
25 production of Plaintiffs' promissory note ("Note"). More importantly, it concerns, firstly, the
lawful ownership and alleged securitization of the Note, and the apparent fact that the

1 securitization was never done, thereby defrauding the investors who purchased mortgage-
2 backed securities in an empty trust, the borrowers, and the courts. It concerns the absence
3 from the record of any proof that the Note was properly and timely endorsed to U.S. Bank
4 National Association pursuant to the Pooling and Servicing Agreement and Prospectus in
5 compliance with New York Trust Law and the terms of the IRS Code governing real estate
6 mortgage investment conduits ("REMICs").

7 2. Secondly, the Deed of Trust was indisputably not timely assigned to the WFMBS
8 2006-AR2 trust pursuant to the trust's PSA and Prospectus on or before February 27, 2006,
9 in violation of NY Trust Law and the terms of the IRS Code governing REMICs. There is
10 no evidence of timely lawful transfer of either the promissory note or the mortgage into the
11 WFMBS 2006-AR2 trust.

12 3. Taken together, the foregoing omissions and violations mean that the Plaintiffs' loan
13 is not lawfully included in the WFMBS 2006-AR2 trust. Consequently U.S. Bank National
14 Association as Trustee for the WFMBS 2006-AR2 trust lacks a perfected interest in the
15 Plaintiffs' property, and therefore, no foreclosure sale and subsequent transfer of title by and
16 among by these parties could be lawful. See for example In Re: Horace vs LaSalle Bank
17 NA, March 25, 2011, Circuit Court of Russell County, Alabama, Case no. 57-CV-2008-
18 000362.00 (finding that no securitization of the Horace loan occurred. The trustee for the
19 securitization trust had no authority or standing to foreclose or take title. LaSalle Bank NA
20 permanently enjoined from foreclosing.)

21 4. Additionally, the foregoing violations mean that U.S. Bank National Association
22 lacked authority to issue the limited power of attorney ("LPOA") to Wells Fargo Bank N.A.,
23 and to substitute the trustee. The Substitution of Trustee on record is defective and without
24 force or effect.
25

1 5. Consequently, as the Defendants and their attorneys knew or should have known, the
 2 Notice of Default and Notice of Trustee's Sale are defective, the August 24, 2010 Trustee's
 3 Sale is defective and void, and the Trustee's Deed Upon Sale is defective, void and
 4 fraudulent.

5 6. Plaintiffs demand discovery, full disclosure, and a full accounting of all monetary
 6 transactions related to Plaintiffs' "loan". Plaintiffs specifically demand production of the
 7 sealed custodial file with proof of full compliance with the PSA and Prospectus, NY Trust
 8 Law and the IRS Code governing REMICs.

9 7. Plaintiffs have not had their day in court. Plaintiffs have raised genuine issues of
 10 material fact. The issues raised have not been fully and fairly litigated. The doctrine of *res*
 11 *judicata* cannot be applied to the summary judgments which occurred in Plaintiff Bailey's
 12 Chapter 11 bankruptcy proceedings. (See for example Vella v. Hudgins (1977) 20 Cal.3d.
 13 251, 572*). The instant Complaint is Plaintiff Marlow's first. "Full and fair" litigation is
 14 appropriate and necessary.

15
 16 *In Vella v. Hudgins (1977) 20 Cal.3d. 251, 572, the Supreme Court of California declared:
 17 "[W]e are of the further opinion that section 1161a does not require a defendant to litigate,
 18 in a summary action within the statutory time constraints (§§ 1167, 1179a), a complex fraud
 19 claim involving activities not directly related to the technical regularity of the trustee's sale.
 20 In the absence of a record establishing that the claim was asserted and that the legal and
 21 factual issues therein were fully litigated, we conclude that the question of the fraudulent
 22 acquisition of title was not foreclosed by the adverse judgment in the earlier summary
 23 proceeding."

24 8. The Plaintiffs do not deny that an obligation exists. However, on information and
 25 belief, the obligation is not owed to these parties, who are intermediaries who were paid in
 full immediately upon sale of the "loan", and who continue to make money from servicing

1 the "loan", from insurance proceeds, and other activities. The amount of the obligation owed
2 remains unknown, in the absence of the full accounting demanded. On information and
3 belief, the obligation has been satisfied in full or in part by third parties, including but not
4 limited to payments by federal bailout, TARP, credit default swaps and other forms of
5 insurance.

6 9. Default has been alleged but not proven. No accounting has been provided to support
7 a declaration of default. The PSA requires the servicer to provide ongoing payments to the
8 investors, which on information and belief continue to this day. Therefore, no default has
9 occurred to date.

10 10. The Property was sold pursuant to a credit bid at Trustee's Sale on August 24, 2010.
11 U.S. Bank National Association is not a bona fide creditor. U.S. Bank National Association
12 does not have a perfected security interest in the Property. Only a bona fide creditor may
13 purchase a property by credit bid. All others must pay cash pursuant to the terms of the trust
14 deed. U.S. Bank National Association is therefore not a bona fide purchaser and the
15 Trustee's Sale is void.

16
17 11. As a Chapter 11 Debtor-in-Possession, Plaintiff Bailey has the rights and powers of
18 the U. S. Trustee, and has the status of a bona fide purchaser of the Property.

19
20 12. As set forth above, there are triable issues of material fact regarding the validity of
21 the Deed of Trust, the succession of First American LoanStar Trustee Services as trustee
22 under the Deed of Trust, the Notice of Default, the subsequent Trustee's Sale, and the
23 Trustee's Deed Upon Sale.

24 13. Defendants violated the Truth in Lending Act by failing to disclose all parties to the
25 "loan" transaction, and they mis-identified parties on the loan documents. The party

1 identified as the "lender" in the loan documents, Wells Fargo Bank N.A. was in fact not the
2 lender, who was and remains undisclosed. The funds for the "loan" were provided by an
3 undisclosed party or parties (the lender) not Wells Fargo Bank NA.
4

5 14. The Defendants violated California Civil Code § 2923.5. Defendants made no
6 attempt to contact or negotiate with Plaintiffs prior to moving forward with foreclosure
7 proceedings. The 2923.5 certificate provided by Defendants as evidence of compliance is
8 unsigned and unexecuted, and no box is checked.

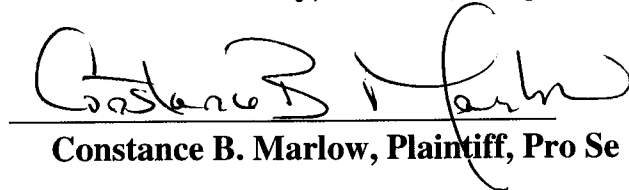
9 15. Finally, Plaintiffs do not have to be beneficiaries of the PSA to raise the issue of the
10 Trust's ownership of their loan. The Plaintiffs are not trying to enforce the Trust Agreement,
11 they are simply showing that the foreclosing trust has no interest in the loan and
12 consequently does not have standing. Standing is a threshold issue to any litigation and the
13 Plaintiffs axiomatically have the right to raise it.
14

15
16 WHEREFORE, Plaintiffs request that this Court deny the Motion to Dismiss, and Order the
17 production of evidence as set forth above.
18

19 Respectfully submitted June 3, 2011
20

21 
22

23 **Andrew C. Bailey, Plaintiff, Pro Se**

24 
25


Constance B. Marlow, Plaintiff, Pro Se

CERTIFICATE OF NOTICE

Copies of the foregoing mailed on June 3, 2011 to:

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Constance B. Marlow, Plaintiff, Pro Se